IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 12534 of 2004

Between:

Kuntra Pakam Nagamma W/o K.Nagaraju
Mamandur Village, Renigunta Mandal
Chittoor District

..... PETITIONER

AND

1 The District Collector & District Magistrate, Chittoor District
Chittoor
2 The Secretary, Government of AP. Home Department
Secretariat, Hyderabad
3 The Superintendent, Central Prison, Hyderabad

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Habeas corpus directing the respondents to produce Kutrapakam Nagaraju S/o Venkataiah, who is now lodged in Central Prison, Cherlapalli Before this Hon'ble Court and he may be directed to be released forthwith after declaring the detention is illegal and void,

Counsel for the Petitioner: MR.MASTHAN NAIDU CHERUKURI

Counsel for the Respondents.: ADVOCATE GENERAL

The Court made the following :

HON'BLE SRI JUSTICE BILAL NAZKI

AND

HON'BLE SRI JUSTICE S. ANANDA REDDY

W.P. No. 12534 of 2004

JUDGMENT: (Per Hon'ble Sri Justice Bilal Nazki)

This writ petition is filed by Kuntra Pakam Nagamma, wife of Nagaraju. She has challenged the order dated 8.5.2004 by which the District Collector and District Magistrate detained her husband Kuntra Pakam Nagaraju (hereinafter referred to as the "the detenu") under Section 3 (1) (2) r/w. Sections 2 (a) and 2 (g) of the A.P. Prevention of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, Act 1 of 1986, (hereinafter referred to as "the Act) on the ground that he was a goonda and he was acting in a manner prejudicial to the maintenance of public order.

It is submitted in the writ petition that the grounds of detention refer to six incidents alleged to have taken place within a span of eight months. These incidents point out that the detenu entered into reserve forest and cut the red sander trees. It is also contended that in all these cases he was seen by the forest officials, but he had escaped. In one case it is stated that he was apprehended by the forest officials on 6.1.2004 at 4.30 P.M. and his statement was recorded. It is submitted that the District Magistrate has reached to the conclusion that the activities of the detenu were prejudicial to the maintenance of public order. It is submitted that there is a lot of difference between public order and law and order and it has been misconstrued by the detaining authority and a person could be detained under preventive laws provided the activities of the detenu were beyond the realm of ordinary criminal law and where the acts of the detenu were prejudicial to the maintenance of public order.

In the counter-affidavit, after narrating the six incidents which have been narrated in the grounds of detention, the District Collector and District Magistrate stated that on the basis of the material placed before him he passed the order of detention after satisfying that the activities of the detenu were prejudicial to the maintenance of public order and therefore the detenu was taken into custody. Now the incidents which have been reported are,

1. On 10.7.2003 at 5.00 A.M. the forest officials found that some persons entered the reserve forest, cut the red sanders and stored the red sander logs in Malleru line locality. The forest officials identified the detenu and others who escaped from the forest. Accordingly a case was registered.

2. On 24.8.2003 at 11.00 A.m. the detenu and others entered the reserve forest and cut the red sander trees at Pillikayala Chelam locality of Marnandur section of S.V. National Park, Tirupati Range and when they were seen by the forest officials, they escaped. On thorough

search, 18 red sander logs weighing 572 KGs valued at Rs.25168/- were seized. Accordingly a case was registered.

3. On 6.1.2004 at 4.30 P.M. the detenu and others illegally entered the reserve forest and cut the red sander trees at Kattukalva locality of Napier Beat of Tirupathi Range. The detenu was caught and others escaped. The forest officials seized 6 red sander logs.

4. On 9.3.2004 at night the Forest officials laid a road watch near Thatimanuvanka location in Mamandur North Beat of S.V. National Park, Tirupathi Range. At about 11.30 P.M. A Maruthi van bearing No. KA 02 M 5084 came towards Renigunta. The forest officials chased and stopped the van. Two persons got down from the vehicle and escaped. The forest officials chased and identified the detenu and other accomplice. The van was seized along with 13 red sander logs.

5. On 25.3.2004 the detenu and others illegally entered the reserve forest, cut the red sanders and stored the red sander logs at Pulimanudempa locality of Mamandur North beat of S.V. National Park, Tirupati Range. On seeing the forest officials, the detenu and his associates escaped from the spot. 18 red sander logs were seized.

6. On 31.3.2004 at about 5.30 P.M. the detenu along with other accomplices were found moving suspiciously besides Railway track. On noticing the forest officials, the detenu and others escaped from the spot. 20 red sander logs were seized from the scene.

The learned counsel for the petitioner submits that all these cases pertain to committing of an offence which is punishable under

law and nowhere these incidents give even a remote impression that they would create a problem to maintenance of public order and therefore the detention was itself bad. He relies on a judgment reported in *Dr. Ram Manohar Lohia Vs. State of Bihar* in which the Supreme Court pointed out the difference between public order and law and order. This judgment has been accepted till date. In *Wasi Uddin Ahmed Vs. The District Magistrate, Aligarh, U.P. and others* the Supreme Court, while discussing the public order vis-à-vis law and order, stated in para-21,

> "On the merits, it is argued that the grounds of detention served on the detenu were not connected with "maintenance of public order", but they relate to "maintenance of law and order". There is no merit in the contention whatsoever. The distinction between "law and order" and "public order" has been brought out succinctly in *Dr Ram Manohar Lohia* v. *State of Bihar, AIR 1966 SC 740, Arun Ghosh* v. *State of West Bengal, AIR 1970 SC 1228, Pushkar Mukherjee* v. *State of West Bengal, AIR 1970 SC 852* and *Nagender Nath Mondal* v. *State of West Bengal, AIR 1972 SC 665.* As to what is meant by "public order", Hidayatullah, J. (as he then was) said in *Ram Manohar Lohia case*[10] that any contravention of law always affects order but before it could be said to affect "public order", it must affect the community or the public at large. He went on to consider the three concepts viz. "law and order", "public order" and "the security of the State", generally used in preventive detention laws, and indicated that to appreciate the extent and scope of each one of them, we should have three concentric circles, the largest of them representing "law and order", the next representing "public order" and the smallest representing "the security of the State". An act may affect "law and order", but not "public order", just as an act may affect "public order" but not "the security of the State". The true distinction between the areas of law and order and public order lies not merely in the nature of quality of the act but upon the degree and extent of its reach upon the society. The acts similar in nature but committed in different contexts and circumstances, might cause different reactions. In one case, it might affect specific individuals and, therefore, touches the problem of law and order only, while in another it might affect public order."

I n *Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and others* the Supreme Court held,

> "A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of disturbance of "public order" then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of *Arun Ghosh* v. *State of W.B.(1970) 1 SCC 98)* this Court had an occasion to deal with the distinction between law and order and public order. Hidayatullah, C.J. (as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act

embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Again in the case of *Piyush Kantilal Mehta* v. *Commissioner of Police (1989 Supp. (1) SCC 322)* this Court took the view that in order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land."

The learned counsel for the petitioner has also relied on a judgment of this Court in WP Nos. 9965 and 10826 of 2004. This was also a case where the detention had been ordered on the ground that the detenu had been cutting, storing and transporting the red sanders. A Division Bench of this Court, while considering whether the detention order could be upheld, found,

> "The contention that the detenu was a habitual offender and a goonda also cannot be accepted. Further, assuming that he was a goonda, the ingredients of Section 2 (a) and the Explanation thereto were not satisfied. The detenu cannot also be called a goonda being himself or as a member or leader of the gang habitually committing or attempted to commit the offences punishable under Chapter XVI, XVII or XXII of IPC. The Act contemplates preventive detention of a person whose activities are dangerous and prejudicial to the maintenance of public order and in that direction, the special law was made. From the activities attributed to the detenu, it is seen that there is no widespread danger or harm caused to the public at large or a section of the people. There was absolutely no ground made out as to the subjective satisfaction of the detaining authority that

> on consideration of the activities of the detenu and on forming an opinion that the activities are such which affect the maintenance of public order, it was necessary to put the detenu in detention."

On the other hand, the learned Advocate General appearing for the State refers to judgments reported in *Anakala Maddileti Vs. Govt. of A.P.* and *Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat* . Both these judgments were earlier considered by the Division Bench of this Court in W.P.Nos. 9965 and 10826 of 2004.

It was also argued that "goonda" in terms of Section 2 (g) of the Act means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code.

Since the detenu had committed an offence which is specifically an offence under Section 20 of the Forest Act, Section 379 of Indian Penal Code was only added to get the detenu within the definition of "goonda", which is a colourable exercise of power. Had he been charged with only an offence under Section 20 of the Forest Act, he could have not been termed to be "goonda" within the meaning of the Act, as "goonda" is a person who is a member of or leader of a gang, and who habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code. Though this argument is attractive, it cannot be accepted at this stage whether an offence under Section 20 of the Forest Act can also be an offence under Section 379 IPC. But as we have stated hereinabove that there was no satisfaction on behalf of the detaining authority that his activities were prejudicial to the public order, therefore following the earlier judgments of this Court referred to above, we hold that the detention was illegal.

Accordingly we allow the writ petition, quash the order of

detention and direct the release of the detenu.

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BNJ.

Dt.26.10.2004

KR

_____ SARJ.

NB:

Advance order be sent immediately.

That the Rule Nisi has been made absolute as above. Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Tuesday, the Twenty Sixth day of October, Two Thousand and Four.

Sd/-

ASST. REGISTRAR

//True Copy//

Section Officer

To

1 The District Collector & District Magistrate, Chittoor District
Chittoor
2 The Secretary, Government of AP. Home Department
Secretariat, Hyderabad
3 The Superintendent, Central Prison, Hyderabad

4. 2CCs to the Advocate General, High Court Buildings, Hyderabad (out)

5. 2CD copies